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The Concept of Sovereignty Revisited

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Beaulac, Stéphane. *The Power of Language in the Making of International Law. The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia*. Leiden: Martinus Nijhoff, 2004. Pp. 200. €90. ISBN 9004136983.

Ilgen, Thomas L. (ed.). *Reconfigured Sovereignty. Multi-Layered Governance in the Global Age*. Aldershot: Ashgate, 2003. Pp. xii + 224. $99.95 £52.50. ISBN 0754635341.

Walker, Neil (ed.). *Sovereignty in Transition*. Oxford: Hart, 2003. Pp. 556. £53. ISBN 184113337X.

Abstract

This essay, in discussing some recent contributions to the contemporary debate on sovereignty, focuses on what is at stake in this debate. While most authors today agree that the meaning of the concept of sovereignty is open to change across time and space, students of international law and international relations disagree about the causes and consequences of this conceptual change. While some scholars take such changes to be indicative of a corresponding transformation of global institutions, others regard them as evidence of the remarkable endurance of the Westphalian order. In this essay, I argue that this disagreement depends less on divergent accounts of the world, and more on the ontological status implicitly accorded to concepts by these authors. I conclude by pointing out that the very emphasis on the changing meaning of sovereignty makes normative problems intrinsically hard to settle, and that dealing with this impasse will be a major challenge to legal and political theory in the years to come.

The concept of sovereignty, once relatively uncontested, has recently become a major bone of contention within international law and international relations theory. Rather than presupposing that the concept of sovereignty has a timeless or universal meaning, more recent scholarship has focused on the changing meanings of this concept across a variety

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of historical and political contexts.[1] Much of this contestation and subsequent historical exploration has been undertaken as a result of an earlier linguistic reorientation within the social and legal sciences. One main upshot of this reorientation has been to claim that language, rather than being a neutral medium of representation, is actively involved in the constitution of legal and political reality. Yet, contrary to initial expectations, the linguistic turn has increased rather than diminished the staying power of the concept of sovereignty within legal and political discourse. The very moment that scholars decided that the meaning of sovereignty lies very much in what we make of it through our linguistic conventions and rhetorical practices, they also opened up a new field of inquiry within which this concept could survive and thrive, albeit now as an object of inquiry rather than as its uncontested foundation. What then became the subject of great interest was the question of *why* the meaning of this concept changes across time and space, and under what conditions these changes in turn spill over into institutional change on a grand scale.[2]

Another outcome of this reorientation is that the previously distinct concerns of academic international relations and international law have tended to converge. The very focus on the *concept* of sovereignty brought about by this linguistic reorientation – rather than on the facts or norms of sovereign statehood – has provided a common ground where the concerns of lawyers and political scientists can again meet, relatively undisturbed by epistemological differences. Both disciplines have now deconstructed themselves back to a normal working relationship, with enough common ground to make their differences seem topical rather than merely confusing. As a result, the concept of sovereignty has become the focal point of an interdisciplinary debate that concerns the most basic of questions: In what kind of world do we live, and what kind of entities make up this world?

Two main answers to this question compete within contemporary international relations theory. According to the first view, the sovereign state is unlikely to remain the main locus of political authority and community in the future. It is challenged by new constellations of authority and community which transcend the divide between the domestic and the international spheres, and will soon be replaced by new forms of political life that know nothing of this distinction. Yet the tricks that the concept of sovereignty continues to play on our political imagination make it difficult to make coherent sense of these new constellations as they do not conform to the indivisibility and discreteness that characterize sovereignty. This concept should therefore either be abandoned, or be redefined in order to make sense of these new constellations.[3]

[1] H. Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (1994); J. Bartelson, *A Genealogy of Sovereignty* (1995).

[2] C. Reus-Smit, *The Moral Purpose of the State. Culture, Social Identity, and Institutional Rationality in International Relations* (1999); D. Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (2001).

[3] For different versions of this argument, see, e.g., Gill, 'Reflections on Global Order and Sociohistorical Time', 16 *Alternatives* (1991) 275; Luke, 'Discourses of Disintegration, Texts of Transformation: Re-Reading Realism in the New World Order', 18 *Alternatives* (1993) 229; Cerny, 'Globalization and the Changing Logic of Collective Action', 49 *International Organization* (1995) 595; Clark, 'Beyond the Great Divide: Globalization and the Theory of International Relations', 24 *Review of International Studies* (1998) at 479; Agnew, 'Mapping Political Power beyond the State Boundaries: Territory, Identity, and Movement in World Politics', 28 *Millenium* (1999) 499.

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According to the second view, the sovereign state is likely to remain a potent source of authority and community even in the future. Those emergent constellations of authority and community that allegedly challenge the predominance of the sovereign state are ultimately only manifestations of its successful sovereignty claims. They are thus indicative of the remarkable endurance of this concept in both theory and practice. When properly understood, therefore, the concept of sovereignty retains much of its explanatory power and normative relevance.[4]

At closer inspection, much of this disagreement turns out to be a matter of philosophical principle rather than indicative of the political makeup of the world. In this author's view, the underlying sticking point in this debate concerns the ontological status of concepts, a question that has been conveniently neglected by many of those who have taken the linguistic turn within political science and law. Indeed, many constructivists seem to assume that this question has been settled once and for all, and are thus blind to the ontological implications of their own arguments. On the one hand, the belief that sovereignty is undergoing profound change is greatly facilitated by a *nominalist* view of concepts since, according to this view, concepts are nothing but general names that we use to constitute different classes of objects as distinct from each other. To the nominalist, conceptual change is therefore a matter of sharp historical discontinuities between different classificatory schemes of our own making. On the other hand, the belief that sovereignty is a permanent feature of political life is nourished by a *realist* view of concepts, according to which classes of objects exist independently of our descriptions, and instead condition their possibility. To the realist, conceptual change is much more like a thematic variation of an underlying core meaning that remains basically the same across time and space.[5] As I shall attempt to show in this essay, these different attitudes to concepts and their meaning continue to fuel much disagreement in the contemporary debate on sovereignty. I shall discuss three books. The first, *Reconfigured Sovereignty. Multi-Layered Governance in the Global Age*, edited by Thomas Ilgen, analyses how and why sovereignty has been relocated as a consequence of economic and political globalization. The second book, *Sovereignty in Transition*, edited by Neil Walker, discusses the implications of such a relocation for legal and political theory. Finally, *The Power of Language in the Making of International Law* by Stéphane Beaulac, studies the emergence of the modern concept of sovereignty. Thus, taken together, these books unintentionally offer complementary perspectives on the concept of sovereignty and its theoretical and empirical manifestations.

1

Some of the problems resulting from a nominalist interpretation of the concept of sovereignty are highly visible in *Reconfigured Sovereignty.* Its author argues that

[4] S.D. Krasner, *Sovereignty. Organized Hypocrisy* (1999); Werner and de Wilde, 'The Endurance of Sovereignty', 7 *European Journal of International Relations* (2001) 283.

[5] The tension between these views has been explored by I. Hacking, *Historical Ontology* (2002).

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sovereignty is a much more fluid and malleable concept than its standard characterization as fixed and immutable in international affairs. The introductory chapter posits that sovereignty nowadays is seldom monopolized by the state, but is regularly divided and shared among state and non-state actors at all levels of governance, depending on the issue or problem at hand. Furthermore, while most existing scholarship has argued that the principal challenges to state sovereignty come from outside the state, and that state governments have responded to these challenges by sharing sovereignty with and within international organizations, this volume focuses on the *internal* challenges to state sovereignty. In pursuing this inquiry, the contributors argue that both internal and external factors have increased the sovereignty of sub-national levels of governance: sovereignty is a continuous variable.

In his ambitious overview of the history of sovereignty, Ilgen explores the tension between the universal acceptance of the sovereign state as the primary form of political organization and the gradual emergence of a global market economy. While the history of sovereignty culminates in its concentration in the nation-state, it is challenged by the market economy and its natural tendency to expand beyond the politically defined boundaries of states. Consequently, crucial features of state sovereignty have been weakened, such as its ability to make and enforce laws, the power to define and defend territorial borders, as well as the capacity to shape and direct economic performance. In Ilgen's view, this has led to the creation of supranational institutions of global governance and to a downward diffusion of power to sub-national actors such as cities and regions.

Individual contributions to this volume corroborate this trend towards a downward diffusion of sovereignty. Barry Jones, Elizabeth Crighton and Nigel Boyle make convincing empirical cases in favour of the view that such downward devolution within Great Britain has been beneficial to Welsh and Irish economic development, and go as far as arguing that it might be conducive to peace in the case of Northern Ireland. Mark Donovan analyses the sources of constitutional and political change in Italy, and concludes that the strong pressures for decentralization and devolution have had a profound and lasting impact upon Italian politics and society. Examples from Germany and Turkey further substantiate the impression that sovereignty has been and still is in the process of being reconfigured within different national contexts, and that this development constitutes a reasonable response to the logic of political globalization. In the last chapter, Thomas Ilgen concludes that while it is hard to generalize about the causes of this reconfiguration, ineffective or dysfunctional central government coupled with external economic pressures push towards a diffusion of sovereignty, and hence towards multilayered governance. So while the sovereign state certainly has not withered away, much of its former authority has been dispersed to other levels of governance, above as well as below the institutions of central government.

In many ways, this is a standard account of the political consequences of globalization. Yet through its focus on the internal dynamics of political globalization, this volume yields some interesting insights into the mechanisms of decentralization and devaluation of political authority. But is the concept of sovereignty really necessary in

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order to understand this development? On the one hand, the concept of sovereignty provides the contributors to this volume with a common focus. On the other hand, the concept is used in such a way that it becomes hard to distinguish it from that of autonomy. The authors invariably use the term sovereignty with little regard to its traditional connotations of indivisibility and discreteness, thereby implying that these logical properties have become irrelevant to our attempts to make sense of contemporary political life. Thomas Ilgen and his crew seem happy to assume that sovereignty simply *is* divisible and continuous. By choosing not to confront the semantics of sovereignty head on, the contributors to this volume not only fail to distinguish the concept of sovereignty from other concepts, but also miss the opportunity to defend themselves against the objection that, given their theoretical and empirical purposes, the concept of sovereignty is ultimately redundant. Unfortunately, sovereignty becomes little more than a shorthand term whose meaning is far removed from the linguistic conventions that the empirical analyses of this volume challenges. As a result of this unwillingness to confront the problem of sovereignty at the conceptual level, many of the principal questions in contemporary legal and political theory cannot be formulated, let alone answered.

2

These and other problems are dealt with in *Sovereignty in Transition*. The focus of this volume is primarily legal, yet its editor, Neil Walker, has done an excellent job in bringing together contributions from a variety of perspectives from within different disciplines. While the various authors provide distinct, if not incommensurable, interpretations of the concept of sovereignty, there is nevertheless a strong sense of intellectual coherence that derives from a shared focus on the *conceptual* problems that arise in thinking about sovereignty in transition. All the contributors to this volume seem more or less painfully aware of the tension that exists between the traditional view of sovereignty as an indivisible and discrete condition of possible statehood, and the actual dispersion of political power and legal authority to the sub- and supranational levels. They are also very aware of the fact that whenever the concept of sovereignty is simply redefined in order to be better attuned to this dispersion of authority, a series of paradoxes arise that must be resolved if those new constellations of power and authority are to be perceived as legitimate. The chief virtue of this volume is the consistent ambition among its authors to explore and tackle these paradoxes head on, rather than brushing them under the carpet as has frequently been done in contemporary political theory.[6] As it would not be possible to do this impressive volume full

[6] See, e.g., D. Held, *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance* (1995); Held, 'Democracy and Globalization', in D. Archibugi, D. Held and M. Köhler (eds), *Re-Imagining Political Community* (1998) 11; Held, 'Cosmopolitanism: Globalization Tamed?', 29 *Review of International Studies* (2003) 465; Archibugi, 'Cosmopolitan Democracy and Its Critics: A Review', 10 *European Journal of International Relations* (2004) 437; Held, 'Principles of Cosmopolitan Order', in G. Brock and H. Brighouse (eds), *The Political Philosophy of Cosmopolitanism* (2005) 10.

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justice within the small space of this review essay, I shall limit myself to providing the reader with a few reflections.

How can we develop a conception of sovereignty that can underpin the actual constitutional pluralism of the European Union? In order to answer this question, Neil Walker defines sovereignty as a discursive claim concerning the existence and character of a supreme ordering power for a particular polity. He then goes on to argue that such a conception indeed is indispensable in order to understand and justify the transition from good old Westphalian sovereignty to our present condition of late sovereignty. The constitutional pluralism and multidimensional order that characterize late sovereignty display considerable continuity with the old order in the way that they handle the tension between law and politics, yet they have certain distinctive features of their own. Boundaries are no longer territorial, but have become functional to the effect that 'it becomes possible to conceive of autonomy without territorial exclusivity' (at 23). If we are to believe this account, there is no going back from this new order, only forward: not only is the condition of late sovereignty here to stay, but it is also a powerful recipe for a piecemeal transformation of the international system into a world polity.

If understanding sovereignty as a discursive claim helps us to make sense of emergent polities, it is less helpful when it comes to the question of how such polities might be turned into political communities governed according to the constitutional requirements of popular sovereignty. Such an understanding would require a systematic account of the relationship between *constituting* power and *constituted* power, in order to explain how citizens or subjects might be constituted as a *demos*, and how this *demos* in turn might provide governmental authority with democratic legitimacy. Since Rousseau, this problem has been a perennial source of debate in legal and political theory, as it begs the simple question of how the people can both rule and be ruled simultaneously.

This problem is dealt with systematically in a brilliant essay by Bert van Roermund. As he points out, the concept of sovereignty is *prima facie* incoherent, since it signifies both the political power constituting the law and the law restraining that very power. Van Roermund then analyses some of the standard responses to this apparent incoherence before attempting to dissolve the paradox by accounting for the necessary unity and agency of a given *demos* in terms of a reflexive relationship between a representation of its unity and its self-representation, since 'self-representation never seems to capture the self that is representing itself' (at 41). If I have understood van Roermund correctly, popular sovereignty does indeed possess the long-disputed capacity to legitimize itself without recourse to anything over and above the people thus constituted. If this indeed is the case, it would imply that other solutions to this problem are simply redundant.[7]

The analysis provided by Martin Loughlin is best described as neoclassical. In his view, efforts to move beyond our traditional conceptions of sovereignty are rather

[7] See, e.g., B. Honig, *Democracy and the Foreigner* (2001), at 1–40.

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misguided, since this concept is indispensable to our understanding of the modern political and legal order. Sovereignty is the very relational interface between law and politics, that which both separates these domains *and* binds them together. As such, sovereignty represents the autonomy of the political, and hence provides the foundation of public law. Sovereignty is thus profoundly political in nature, and 'comes into existence through a process in which a group of people within a defined territory is moulded into an orderly cohesion through the establishment of a governing authority that can be differentiated from society and which is able to exercise an absolute political power' (at 56). Loughlin goes on to explain the many manifestations of sovereign authority within modern polities, arguing that it is a coherent concept of continuing relevance despite appearances to the contrary. Claims that we have reached the end of sovereignty are rooted in a misunderstanding of the concept of sovereignty and its meaning: sovereignty remains a potent force in the contemporary world. This essay is decidedly impressive in its intellectual ambition. However, it is hard to see how a different conclusion could have been reached, given the ontological assumptions that silently inform both the definition of the concept and the subsequent inquiry: sovereignty is here to stay very much by virtue of the view of the ontological status of concepts implicit in this account.

Such a view of concepts and their meaning is exactly what is contested in a piece that promises to be an influential contribution to the present debate. To Hans Lindahl, '[s]overeignty is the concept by means of which modern political and legal philosophy elaborates the problem of the *contingent* unity of a political community' (at 88). Here, the concept of sovereignty is not merely understood in terms of its meaning and reference, but in terms of its function within discourse. Lindahl elaborates the implications of this view for our understanding of the logic of political representation in the European Union. While the standard picture of sovereignty accepts that political power has been diffused, it cannot generate a solution to the problem of democratic representation, since the question of 'who is affected and what is the problem to be solved are matters of substance that require deliberation, yet deliberation cannot kick off without a prior determination of the members and the problem of the deliberative body' (at 93). Lindahl further observes that the 'people, as a unity, is never directly accessible; unity is always a represented unity' (at 97). His way out of the resulting paradox is both simple and original, and also provides an escape from the predicament described by Derrida in *Force de Loi*: the coming into being of a political community is propelled by a dialectic between constituting and constituted power, where the former act of sovereignty is simply a matter of *seizing the initiative*. Consequently, this suggests that 'there is a core of irreducible groundlessness at the heart of every political community, but also that no polity is contemporaneous with its own genesis' (at 113). This is another remarkable way of bringing the mythological lawgiver from *Du Contrat Social* down to earth, yet without ending up in the arms of old Nick in doing so.

Richard Bellamy shares these concerns with democratic legitimacy and rights within the European Union, but delivers a different solution. He is critical both of the view that state sovereignty has been transferred to other bodies and the view that it

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has evaporated in favour of an international rights regime. To him, political sovereignty still persists, but changing legal norms have altered its basis. The challenge is to 'retain certain key elements ... of a sovereign system, notably effective and democratic government, within the new conditions of a post-sovereign world of multiple polities, regimes and identities and without losing some of the welcome curbs on arbitrary power these developments have produced' (at 180). Bellamy goes on to specify the principles of mixed sovereignty that would satisfy these requirements, thereby returning to and reviving the ideals of civic republicanism. The aim is to produce a balance between the interests and values of individuals and groups within the polity, obliging them to interact with each other in fair and reciprocal ways. Bellamy envisages a polity in which all arbitrary power is kept in check and in which unity is based on constant dialogue and negotiation, but he has little to say about the *boundaries* of such a polity. How are they to be drawn, and in whose name? Here Bellamy, like many other political philosophers, remains silent.

Another approach to the question of democratic legitimacy is taken up by Michael Keating. Noting how the notoriously ambiguous concept of sovereignty nevertheless has been constitutive of the disciplines of political science and international relations, he proceeds to describe the challenges faced by the modern sovereign nation-state, and the reasons why these disciplines have had a hard time making sense of these challenges. As he notes, 'sovereignty is said to be ebbing away, but new sovereignty claims are being made all the time' (at 204). His response to the current predicament in which there is no single European *demos* to underpin a democratic order, and where the operation of multilevel governance is thus relatively unconstrained by such concerns, is to propose what he terms *plurinational* democracy, 'locating democracy in communities of will, incorporating historic rights and current demands and recognising the needs of mutual accommodation' (at 208). This solution of course begs the question of why the nation should still be conceived of as the exemplary form of community, and to what extent it should be regarded as the predominant source of political will in a world in which the very idea of distinct and bounded national identities is under challenge.

The relationship between transnationalism and sovereignty receives a refreshing treatment in the hands of Jef Huysmans, who raises the question whether the existence of transnational practices really defies the logic of sovereignty in international politics, or if it merely constitutes one of its many reproductive circuits. Rather than merely reiterating any of the standard views about the corrosive effects of transnational practices upon state sovereignty, Huysmans reformulates this problem in terms of how these practices might affect the *matrix* of sovereignty, understood as the way in which the question of the political conventionally has been formulated in terms of a territorialized distinction between the domestic inside and the international outside. From this perspective, transnational flows 'fragments the international society of sovereign states into functionally defined arenas and consequently challenges the neat fix that territorialized the tension and the gap that characterise the matrix of sovereignty' (at 220). The existence of transnational practices thus opens up the possibility of envisaging politics in terms of pluralization instead of unification, making it

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possible to rework the matrix of sovereignty and thus align it closer to a democratic ethos. Yet if the spectre of sovereignty seems difficult to escape, I suspect that this is at least partly due to the fact that the author takes its presence as the starting point for his analysis.

The fact that most of the contributors to this volume are inclined to take some aspects of sovereignty for granted, while struggling hard to question others, finds a tentative explanation in an essay by Govert Buijs, which explores the theological background of this concept. He attempts to assess the claim, once made by Carl Schmitt, that sovereignty originally and basically is a theological concept which has been gradually secularized. While Buijs does not provide us with anything like a comprehensive conceptual history, he succeeds in unearthing several layers of theological meaning that have been long lost to political and legal philosophy. He then describes how these meanings have continued to condition our understanding of sovereignty despite (or possibly because of) our best efforts to secularize our political and legal theories. Being the blind spot of these attempts, the concept of sovereignty necessarily brings a whiff of incense from another world.

These theoretical expositions are followed by a series of ambitious attempts to analyse the meaning and function of the concept of sovereignty within different national constitutional traditions, as well as from the point of view of European institutions. Jacques Ziller describes how and why the idea that it might be possible to divide and share sovereignty has been so hard to reconcile with the French constitutional tradition, torn between conceptions of national and popular sovereignty both of which are premised on its indivisibility. This has posed an obstacle to the French understanding of European integration. But for better or worse, *Le mal de Bodin* or the fetishism of indivisibility has been highly contagious throughout the centuries and in different countries. As indicated by Miriam Aziz and Marta Cartabia respectively, the problem of sovereignty is very much alive even in those countries – Italy and Germany – where it appears to have been a relative latecomer. Kenneth Armstrong describes how the British constitutional tradition and its location of sovereignty in Parliament increasingly is challenged, and tries to reconcile the claims of common law constitutionalists and pluralists in order to accommodate internal devolution as well as emergence of new sites of political authority outside the British state. Bruno de Witte offers valuable insights from the Dutch and Belgian contexts, where the fetishism of indivisibility has long since been replaced by the kind of constitutional pluralism and pragmatism that seems so desirable, yet has proven so hard to attain in other contexts.

When seen from a European perspective, the constitutional plurality represented by the existence of distinct and relatively continuous national traditions represents both the motivating force behind legal integration as well as its primary obstacle. There seems to be a vanishing point beyond which efforts to reconcile these different traditions is likely to become caught in a pragmatic paradox. As Jo Shaw argues in the case of electoral rights and the question of boundaries in the European Union, this again boils down to what has been a recurrent theme throughout this volume, namely the problem of how to construct a European *demos* on the basis of an idea of the EU as a legitimate political order, and conversely.

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Almost encyclopaedic in its scope and impressive in its intellectual ambitions, this volume is a landmark achievement. It is likely to become a standard reference for all those interested in the recent debate on the problem of sovereignty. The focus on the concept of sovereignty endows the volume with coherence because of an underlying agreement to disagree about its proper meaning and the limits of its contestability. Consequently, most of the contributions to this volume cannot but confirm the salience of this concept within our political and legal vocabularies.

Yet this leads to another set of difficulties. On the one hand, some of the contributors to this volume understand sovereignty as a *condition* of possible agency, ultimately being constitutive of both political entities and the larger society of which they form part. From the point of view of conceptual realism, the concept of sovereignty appears indispensable. On the other hand, other authors are more inclined to regard sovereignty as an *attribute* of individual entities, ultimately being constituted by virtue of their being embedded within a larger legal framework. From this nominalist point of view, the concept of sovereignty appears profoundly problematic.

3

But how and why have we gotten into this intellectual predicament, in which the concept of sovereignty is both indispensable and problematic? The underlying tension between the realist and nominalist conceptions of sovereignty is turned into a relation of mutual implication in Stéphane Beaulac's historical analysis of the concept of sovereignty and the myth of Westphalia in the language of international law. Rather than attempting to define the term sovereignty in order to be able to discuss its proper theoretical meaning, Beaulac instead focuses on the constitutive functions of this concept within early-modern legal and political discourse. Starting from the assumption that attempts at definition are futile since language cannot transcend itself, the author goes on to elaborate the philosophical foundations of an inquiry into the function of legal concepts and myths within legal discourse. Drawing on classical hermeneutics and deconstruction, Beaulac then devises an interpretative scheme that purports to make sense of the salience of the concept of sovereignty and the myth of Westphalia in the shaping of the normative structure of the modern society of states. As the author aptly describes the role of such a myth in international life, it 'triggers reality to become larger than life' (at 39). Hence, words and myths have the power not only to describe and represent reality, but also to actively create and transform it. To Beaulac, the alleged universalistic and timeless connotations of the concept of sovereignty are dynamically constituted through the changing employment of the very term sovereignty.

In the third part of this book, the author argues that all those ideas and institutions which we have come to associate with Westphalia are nothing but a potent fiction that has no basis in the treaties of Münster and Osnabrück. In these texts, the idea of a territorially-based system of independent states is nowhere to be found. These documents dealt with questions of religious toleration, territorial settlements, and the power to make treaties, but never with the kind of wholesale reconfiguration of the

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political order which we have been led to believe by so much modern scholarship. In fact, these documents went a long way towards preserving the power and prerogatives of empire in Europe. In the fourth part, Beaulac sets out to explain how this myth has been fabricated by analysing the meaning and function of the concept of sovereignty in the writings of Bodin and Vattel. While the former is credited for his use of the term in order to 'place the ruler at the apex of a pyramid of authority' (at 122) so as to justify the necessary exercise of absolute power in the context of the French religious wars, the latter is responsible for having projected this notion of supreme and exclusive authority outwards into the emergent society of states. 'This objective was carried out with the fiction of the juridical person … that enjoys the exclusive power among other internal authorities, but more significantly among other public authorities outside … to represent and rule the people within and in their relations with foreign states and individuals' (at 179). Thus, with *Le Droit de Gens*, the modern international society of states emerges as a normative package with its founding myths included, the latter making it possible for 'international society to explain its genesis to itself' (at 186).

With this diagnosis, Beaulac has provided some important clues as to why the concept of sovereignty today seems both indispensable and profoundly problematic. It is indispensable by virtue of being a constitutive element of the modern political order, yet whenever we try to decipher that very order by means of this concept, our attempts to gain understanding are short-circuited due to the very same circularity of language that made the linguistic constitution of that order possible in the first place.

Although the scope and ambition of this book are admirable, there is a tendency towards 'theoretical overkill' resulting from the author's eagerness to incorporate as many insights from the philosophy of language as possible. Nonetheless, while some of his points about Westphalia and Bodin have been noted elsewhere, this book fruitfully explores the *connections* between different concepts of sovereignty and the myth of Westphalia.[8] This makes it a significant contribution to our understanding of the formative phases of international society, as well as of the enigmatic spell that the concept of sovereignty continues to have over our political imagination.

4

So what world *do* we live in, and what kind of entities make up this world? The books under review here convey above all the impression of a world in constant flux. The volumes edited by Ilgen and Walker both describe the transition from a world of sovereign states to a world in which sovereignty has been relocated to different levels above as well as below that of the state. But while the contributors to the former volume use the concept of sovereignty in order to describe some aspects of this transition, the

[8] See, e.g., Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', 55 *International Organization* (2001) 251; Franklin, 'Sovereignty and the Mixed Constitution: Bodin and his Critics', in J. H. Burns and M. Goldie (eds), *The Cambridge History of Political Thought*, 1450–1700 (1991) 298; C. Fasolt, *The Limits of History* (2003).

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contributors to the latter focus on the implications of this transition for the concept of sovereignty and its applicability when justifying the possible outcomes of this change. To Beaulac, all of this is possible only thanks to the prior constitution of sovereignty as the basic organizing principle in an international society of states. The concept of sovereignty thus contains the seeds of its own essential contestability.

This common focus on questions of *becoming* makes questions of *being* intrinsically hard to formulate. But while Beaulac and Ilgen are content to describe the coming into being and passing away of the Westphalian world, the Walker volume can be read as a juridico-political bestiarium, covering a wide range of constitutional alternatives to those prevailing in that world. This volume could also be read symptomatically to indicate what seems to be the main source of confusion today. Not only do we live in a world in which the territorial differentiation into distinct nation-states is being challenged by a functional differentiation into distinct issue areas, but we also live in a world in which the sovereign equality of states no longer constitutes the baseline for further stratification according to relative wealth and power. In this world, there are several normative frameworks competing for both legality and legitimacy when it comes to justifying political practices, such as intervention. The traditional statist framework of international law has been challenged, first by ideas of universal human rights and corollary pleas for cosmopolitan democracy, and then by emergent claims to imperial sovereignty made by the United States and its allies.[9] In the absence of an accepted normative meta-vocabulary, these latter challenges are notoriously hard to separate from each other, so that each attempt to argue with reference to the possibility of a genuine world community is likely to be interpreted as nothing but another expression of imperial ambition. I take the articulation of such a meta-vocabulary to be the chief task of political and legal theory in the years to come, so that the alternatives to the world of states can be gradually evaluated on their own merits.

[9] See Cohen, 'Whose Sovereignty? Empire versus International Law', 18 *Ethics and International Affairs* (2004) 1.

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